

The Law of Contract

Lecture 1

MGT 388



Before we start...

- **Four topics** within Law component of MGT388
 - Contract Law
 - Intellectual Property (IP) Law
 - Law of Torts (Negligence)
 - Environmental Law
- Ten **lectures** are scheduled across weeks 1-11 (no teaching in week 5)
- You are also required to attend two **workshops**:
 - Workshop 1 (Contract Law) will be scheduled in week 6 or 7
 - Workshop 2 (IP Law) will be scheduled for week 10 or 11
- **Assessment**
 - Formative (Non-assessed):
 - 4 x online tests on Blackboard
 - Summative Assessment (50%):
 - Open book, scenario-based, multiple Choice Test



Before we start... a note on timetabling

- For **any timetable issues** do **not** contact me!
- Please see Blackboard for all contact information for timetable issues, It problems etc. If in doubt contact the student experience office in your department.

Why is English contract law relevant to me?

- Basis for much of the world's global business
 - Stable
 - Certain
 - Accessible
 - Responsive to changing nature of commerce
- Professional development & accreditation
- Change of career (GDL/MA Law)
- Personal awareness –
 - Have you entered into a contract today?

商业基础。英国合同法提供了一个相对稳定、确定和可预测的商业环境。这使其成为全球贸易和商业的重要基石。理解英国合同法,有助于更好地进行国际商务往来。



The English Legal System (how law is made)

- Common law jurisdiction

英国属于混合发系，具有成文法和普通法

- Statute/Legislation 英国实行成文法(statute/legislation),即通过立法形式制定法律条文。称为“Acts of Parliament”（议会法案）

- ‘Judge made law’ – legal precedent based on:

- ‘Like facts’ - Stilk v Myrick (1809); Hartley v Ponsonby (1857)
- Hierarchy of the courts 普通法强调“类似法律事实”(like facts)的原则,法官根据以往先例裁决新案件。

法院存在层级结构和判例约束原则,下级法院必须遵循上级法院的判例。

- Historic impact of UK -> Approx. 60 countries legal systems are based on common law or incorporate common law (e.g. USA, India, Malaysia)

英国普通法对包括美国、印度在内的大约60个国家的法系统产生了重大影响。
在英国,法官通过司法先例的累积形成普通法,而国会通过立法形成成文法。两者共同构成英国法律的来源。
在处理个案时,法官既考虑成文法,也会参考普通法判例,并努力在二者之间求取平衡。



Finding the law

- Common law
 - The strength of an *authority* will depend upon it having like facts to the case in hand and generally that it was decided in a higher court.
 - The question of what amounts to 'like facts' is not always easy
 - Two very able advocates trying to persuade the court that the strength of authority supports their case rather than the opposition
- Statute (Legislation)
- Standard terms and conditions – No!



Categorising the law

这个“概率平衡”标准比刑事案件中的“超出合理怀疑” (beyond a reasonable doubt) 的证明标准要低。在刑事案件中，控方必须证明被告有罪的可能性到达几乎确定无疑的程度。而在民事案件中，原告只需证明被告责任的可能性超过50%，也就是说，在所有证据的总和上，被告有责任的说法更加合理和可信。

- Criminal law

- Rules are set out by society for **all** our benefit
- Legal action brought by the state (CPS) 侵权
- Any **fin**es imposed in relation to an infringement are paid to the state
- State must show that defendant is guilty ‘beyond reasonable doubt’
被告

- Civil law

- Legal 法律诉讼 action is brought by the individual who feels that they have suffered
- Action is brought against the party perceived as having done them wrong
- Any sum of *damages* identified as payable by the court goes to the party bringing the action 法院确定应支付的任何损害赔偿金都应支付给提起诉讼的一方
- Claimant must show that defendant is liable ‘on the balance of probabilities’

索赔人必须证明被告“按概率平衡”负有责任，也就是说：
原告必须证明被告有责任的可能性大于没有责任的可能性。



Categorising the law (cont.)

- Public law
 - Concerns public sector in undertaking its public functions (Foster v British Gas)
- Private law
 - But even public sector organisations must enter into private contracts
 - Hospital buying paper and pens
 - Council paying construction firm to build new school



A note on the common law and equity

- ‘Judge made law’
 - Common Law (rule based) = certainty 你有一套清晰的规则来确定你的权利和义务
 - Equity (discretionary) = use court’s discretion to address injustice
自由裁断
- Contract law is generally rule based – you know where you stand

禁止反言原则 (Estoppel)：这是一种原则，在这种原则下，即使合同缺乏对价（通常是形成有约束力合同的关键元素），法院也可能认定合同的有效性。如果一方通过自己的行为让对方相信合同存在，并且对方依赖这种信念，那么禁止反言原则可以阻止该方反驳合同的有效性。

- But equity is significant in ‘pockets’ of contract law e.g.
 - Estoppel – court may find contract exists in absence of consideration
 - Specific Performance -

具体履行 (Specific Performance)：这是合同法中的一种救济方式，当损害赔偿不足以解决合同违约时，法院可能会下达这种命令。与其提供金钱补偿，法院会命令违约方履行其合同中的约定部分。



The importance of privity

- Generally, only the parties to the contract can enforce it in court
- This reflects a *personal* interest in the contract
 - Note: statutory exceptions exist
 - Note: a contract may be assigned (passed on) as property (and so becomes a *proprietary* interest).



Why enter into a contract?

- Facilitate exchange/make bargains 促进交换/讨价还价
- Plan commercial relationship
- Provide certainty
 - Parties to contract design obligations in contract so understand them
 - May help avoid disputes
 - May provide framework for settling disputes
 - eg identify circumstances where it will be appropriate to go to arbitration or mediation
 - e.g set out financial penalties to be paid in the event of certain failings.



What is a contract?

- “An agreement giving rise to obligations which are enforced or recognised by law. The factor which distinguishes contractual from other legal obligations is that they are based on the agreement of contracting parties” (Trietel, 2003)
- “A contract is essentially an agreement which is freely entered into on terms that are freely negotiated” Stuart-Smith LJ in *W v Essex CC* [1998] 3 All ER 111 at p 128
- A contract may be oral or written (except in contracts for land)



Why are contracts enforced by the law?

- “***Pacta sunt servanda***” – promises are made to be kept; contracts are made to be performed.
- The parties have *voluntarily* designed and taken on board their obligations so one party should not be able to go back on their promise
- (Note: it *is* morally acceptable for *both* parties to agree to bring the contract to an end)



How are contracts enforced by law?

- The term 'enforced' can be misleading
- Court *may* award specific performance but very unlikely
- Normal method of enforcement (remedy) - award of damages
 - 补救
 - 损害赔偿
- Calculation of damages - courts try to calculate sum of money which will put the 'wronged' party in the position that they would have been if the contract had been successfully completed
 - (Note: very exceptionally this may lead to 'specific performance')



Essential components of a valid contract

1. Offer
2. Acceptance
3. Consideration
4. Intention to create legal relations
5. Certainty



1. Offer

明确表示如果要约的条款得到满足，愿意受承诺的法律约束-包括所有基本条款

- An unequivocal indication of a willingness to be legally bound by a promise if the terms of the offer are met - includes all the essential terms
 - Note: There is an indication of an 'Intention to create legal relations' at this stage either expressly or otherwise
- An offer may be made to a specific person, a group of people, or to the whole world - Carlill v Carbolic Smoke Ball Co. (1893)
- Offer can be bilateral or unilateral - Carlill v Carbolic Smoke Ball Co. (1893)

双边或单边



Not an 'offer' (merely an invitation to treat)

- **Price lists**
 - *see limited stock argument*
- **Advertisements** (generally)
 - But unilateral contract may exist – as in *Carlill v Carbolic Smoke Ball Co* (1893).
 - An advert can form unilateral contract if:
 - It is in sufficient detail to form basis of a contract & communicates a willingness to be bound.
 - In *Carlill* the promise of the reward and the statement that 'as a mark of their sincerity' money had been placed in a bank account was viewed by the court as providing the above
- **Window/shop displays**
 - shopkeeper retains the ability to say 'no' in relation to age specific goods.



Not an 'offer' (cont.)

- An invitation to tender
 - We can not just say “yes”
 - Essentially an invitation for other parties to *submit* offers
 - Note: if invitation to tender promises to remain open for a period of time, the parties who reply have the right for their tender to be considered - *Blackpool & Fylde Aero Club v Blackpool Borough Council* (1990)
- An auction
 - Bids at auction constitute offer; auctioneer may choose to accept
 - BUT auction is an offer if advertised with no reserve price

